

## Message Text

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ACTION EUR-12

INFO OCT-01 IO-10 ISO-00 PM-03 NSC-05 SP-02 SS-15 RSC-01

L-02 INR-07 CIAE-00 DODE-00 ACDA-05 SAM-01 SAJ-01

SSO-00 NSCE-00 EURE-00 SCA-01 INRE-00 /066 W  
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O R 291225Z JAN 75  
FM USMISSION GENEVA  
TO SECSTATE WASHDC IMMEDIATE 258  
INFO AMEMBASSY BONN  
AMEMBASSY BRUSSELS  
AMEMBASSY THE HAGUE  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY OTTAWA  
AMEMBASSY PARIS  
AMEMBASSY ROME  
USMISSION NATO BRUSSELS

C O N F I D E N T I A L GENEVA 0496

E.O. 11652: GDS  
TAGS: CSCE, PFOR, XG  
SUBJECT: CSCE POLICY - POSSIBLE US LEGAL DIFFICULTIES

REF: GENEVA 0487

1. FROM NATO CAUCUS DISCUSSIONS OF THIS TOPIC (REFTEL  
IT IS CLEAR THAT IT WILL BE FRUITLESS TO PURSUE FURTHER  
THE IDEA OF A COORDINATING COMMITTEE RESOLUTION OR CHAIRMAN'S  
STATEMENT AS SUGGESTED IN STATE 13704. THIS MESSAGE GIVES  
US DEL RECOMMENDATIONS ON ALTERNATIVE APPROACHES.

2. IN DECIDING ON NEXT STEPS, WE SHOULD BEAR IN MIND  
THAT THE PRACTICAL QUESTIONS OUT OF WHICH OUR LEGAL PROBLEMS  
HAVE ARISEN -- US MARRIAGE REGULATIONS AND THE SOCIAL SECURITY  
BENEFITS EXTENDED TO RESIDENT  
ALIEN ADMITTED TO THE US UNDER PROVISIONS OF  
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CSCE FAMILY REUNIFICATION TEXT--HAVE ALMOST NOTHING

TO DO WITH THE ESSENTIAL POLITICAL ISSUES OF THIS  
CONFERENCE. THIS SUGGESTS WE SHOULD SEEK SIMPLE,  
STRAIGHT-FORWARD SOLUTIONS TO THE LEGAL PROBLEMS, AND AVOID, TO  
EXTENT POSSIBLE, ANYTHING LIKELY TO  
SET OFF A POLITICAL CLAMOR HERE.  
(IN THIS CONNECTION, WE CAN SETTLE PROBLEM POSED BY TEXT  
ON WORKING CONDITIONS FOR JOURNALISTS--STATE 20506 JUST  
RECEIVED--NOISELESSLY DURING COURSE OF FURTHER NEGOTIATIONS ON THAT TOPIC.)

3. LEVEL OF COMMITMENT LANGUAGE IN HUMAN CONTACTS INTRODUCTORY TEXT, WHICH IS AN ESSENTIAL COMPONENT OF THE PROBLEM, STRIKES

US AS VERY WEAK: BEGIN QUOTE: DECLARE THEMSELVES RESOLVED  
TO TAKE SUITABLE MEASURES TO THESE ENDS AND TO CONCLUDE  
ARRANGEMENTS AMONG THEMSELVES AS MAY BE NEEDED, AND  
AFFIRM FORTHWITH THEIR INTENTION TO APPLY THE  
FOLLOWING: END QUOTE. STATE 13704 STATES THAT THIS  
FORMULA IS AMBIGUOUS WITH RESPECT TO WHETHER IT CONSTITUTES  
LEGAL COMMITMENT. SHOULD WE NOT THEREFORE  
TAKE REFUGE IN THAT AMBIGUITY AND DEVELOP A CONTINGENCY  
BRIEF, FOR USE IF NECESSARY, THAT SETS OUT THE CASE FOR  
REGARDING THAT LANGUAGE AS SOMETHING LESS THAN A LEGAL  
COMMITMENT? THAT WOULD AVOID FURTHER HAGGLING HERE.  
IT ALSO APPEARS TO US AS THE COURSE OF ACTION MOST  
CONGRUENT WITH THE PETTY DIMENSIONS OF THE POLITICAL  
AND PRACTICAL (AS OPPOSED TO THE STRICTLY LEGAL)  
PROBLEMS AT ISSUE.

4. IF THAT COURSE IF RULED OUT, OUR NEXT STEP SHOULD  
BE AN ATTEMPT TO DEFANG THE TWO SPECIFIC TEXTS THAT  
BOTHER US (MARRIAGE AND FAMILY REUNIFICATION). THE  
OPERATION WOULD BE DOABLE, WE THINK, BUT UNAVOIDABLY  
SOMEWHAT MESSY. SPECIFIC COURSES WE PROPOSE VARY  
ACCORDING TO PARTICULAR CIRCUMSTANCES OF EACH TEXT.

5. WITH RESPECT TO THE MARRIAGE PAPER, NO TEXTUAL  
AMENDMENT WILL MEET OUR NEEDS SINCE THE USG HAS NO  
CONTROL OVER ISSUANCE OF MARRIAGE DOCUMENTS. THUS WE  
WOULD HAVE TO RELY ON A UNILATERAL US INTERPRETIVE  
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STATEMENT, TO BE MADE DURING STAGE II REPEAT II. TEXT  
MIGHT READ SOMETHING LIKE THIS: "THE RELEVANT PROCEDURES  
AND REGULATIONS IN THE UNITED STATES ALREADY CONFORM  
SUBSTANTIALLY TO THE PROVISIONS OF THIS TEXT. HOWEVER,  
THE UNITED STATES GOVERNMENT HAS NO AUTHORITY WITH  
RESPECT TO THE ISSUANCE OF MARRIAGE DOCUMENTS, WHICH  
IS A MATTER ENTIRELY WITHIN THE COMPETENCE OF THE  
INDIVIDUAL STATES."

6. THIS APPROACH WOULD NOT MAKE US POPULAR WITH ALLIED DELEGATIONS HERE OR, FOR THAT MATTER, WITH THOSE OF WARSAW PACT COUNTRIES. EACH SIDE WOULD FEAR THAT OUR INTERPRETIVE STATEMENT WOULD SET A PRECEDENT ENCOURAGING OTHER DELEGATIONS TO FOLLOW SUIT. THE ALLIES FOR EXAMPLE WOULD WORRY ABOUT EASTERN INTERPRETIVE STATEMENTS IN BASKET III, WHILE THE SOVIETS MIGHT FEAR WESTERN DISCLAIMERS WITH RESPECT TO THE PRINCIPLES DECLARATION OR OTHER TEXTS OF PARTICULAR IMPORTANCE TO THEM.

7. WHILE WE WOULD LIKE TO HAVE MORE TIME TO REFLECT ON THE DETAILED TACTICAL APPROACH, WE COULD REDUCE THE RISKS OF OPENING THE WAY TO A RASH OF INTERPRETIVE STATEMENTS IF WE MADE OURS VERY LATE IN THE DAY--PERHAPS WHEN THE MARRIAGE TEXT IS FORMALLY REGISTERED (IT IS ONLY "MENTALLY" REGISTERED NOW), NEAR THE END OF STATE II. WE WOULD PROBABLY WANT TO CONSULT WITH THE ALLIES, AND PERHAPS ALSO WITH THE SOVIETS, A LITTLE IN ADVANCE OF OUR ACTION.

8. WITH RESPECT TO THE FAMILY REUNIFICATION PAPER, A RELATIVELY MINOR AMENDMENT TO THE PARAGRAPH IN QUESTION PROBABLY WOULD OBTAIN OUR LEGAL DIFFICULTIES BY REMOVING PHRASE "SEE THAT THEY ARE AFFORDED OPPORTUNITIES, ETC." THAT TEXT NOW READS: QUOTE: THE RECEIVING PARTICIPATING STATE WILL TAKE APPROPRIATE CARE WITH REGARD TO EMPLOYMENT FOR PERSONS FROM OTHER PARTICIPATING STATES WHO TAKE UP PERMANENT RESIDENCE IN THAT STATE IN CONNECTION WITH FAMILY REUNIFICATION WITH ITS CITIZENS AND SEE THAT THEY ARE AFFORDED OPPORTUNITIES EQUAL TO THOSE ENJOYED BY ITS OWN CITIZENS FOR EDUCATION, MEDICAL ASSISTANCE AND SOCIAL SECURITY. END QUOTE. WITH CONFIDENTIAL

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SOME MINOR DELETIONS AND SUBSTITUTIONS, CONTROLLING VERBAL PHRASE "TAKE APPROPRIATE CARE" WOULD COVER THE ENTIRE TEXT. IT WOULD THEN READ: QUOTE: THE RECEIVING PARTICIPATING STATE WILL TAKE APPROPRIATE CARE WITH REGARD TO EMPLOYMENT FOR PERSONS FROM OTHER PARTICIPATING STATES WHO TAKE UP PERMANENT RESIDENCE IN THAT STATE IN CONNECTION WITH FAMILY REUNIFICATION WITH ITS CITIZENS AND WITH REGARD TO AFFORDING OPPORTUNITIES EQUAL TO THOSE ENJOYED BY ITS OWN CITIZENS FOR EDUCATION, MEDICAL ASSISTANCE AND SOCIAL SECURITY. END QUOTE. THIS WE BELIEVE SHOULD SUFFICE.

9. BECAUSE OF THE NEGOTIATING HISTORY OF THE TEXT (FOR DETAILS SEE GENEVA 7129), SOVIETS AND THEIR ALLIES ATTACH SYMBOLIC IMPORTANCE TO THIS PARA-

GRAPH (ALTHOUGH WE SERIOUSLY DOUBT THAT THEY CARE VERY MUCH ABOUT ITS IMPLEMENTATION IN PRACTICE). THEY MAY THEREFORE BE SENSITIVE TO ANY PROPOSAL FOR AMENDMENT, BUT PROBABLY WOULD AGREE IN THE END IF WE PRESSED THE ISSUE. THEY UNDOUBTEDLY WOULD DEMAND A QUID PRO QUO FROM US, AND WE WOULD HAVE TO DEFLECT SUCH DEMANDS AS BEST WE COULD, DEPENDING UPON THE CIRCUMSTANCES.

10. OUR ALLIES WOULD ALSO BE BOTHERED BY ANY US EFFORT TO REOPEN THE FAMILY REUNIFICATION PAPER, BUT FOR QUITE DIFFERENT REASONS. THEY WOULD NOT LIKE TO SEE US SET A PRECEDENT FOR REOPENING TEXTS THAT HAVE ALREADY BEEN PROVISIONALLY REGISTERED. MOREOVER, THE FRG AND OTHERS WOULD FEAR THAT, IF WE ASK THE SOVIETS TO AGREE TO AMEND A PARAGRAPH IN THE FAMILY REUNIFICATION PAPER OF PARTICULAR INTEREST TO WARSAW PACT STATES, THE LATTER WILL SEEK COMPENSATION, AT WESTERN EXPENSE, ON OTHER PARTS OF THAT TEXT.

11. WITH RESPECT TO TACTICS, IF WE MUST TRY TO AMEND THE FAMILY REUNIFICATION PAPER, WE SHOULD PROBABLY BEGIN CONSULTATIONS--FIRST WITH THE ALLIES AND THEN WITH THE SOVIETS--SOONER RATHER THAN LATER. THE LONGER WE WAIT, PROBABLY THE MORE DIFFICULT THE OPERATION WILL BECOME. DALE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** HUMAN RIGHTS, INTERNATIONAL LAW, POLICIES, NEGOTIATIONS, MEETING DELEGATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 29 JAN 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GolinoFR  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975GENEVA00496  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D750032-1052  
**From:** GENEVA  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1975/newtext/t19750111/aaaaajnx.tel  
**Line Count:** 193  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** 75 GENEVA 0487  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** GolinoFR  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 14 APR 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <14 APR 2003 by KelleyW0>; APPROVED <15 APR 2003 by GolinoFR>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** CSCE POLICY - POSSIBLE US LEGAL DIFFICULTIES  
**TAGS:** PFOR, XG, US, CSCE, NATO  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006